



James K. Smith
Director
Federal Relations

January 19, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation
CC Docket 98-147
Deployment of Advanced Telecommunications
Capability

Dear Ms. Salas:

Please include the attached document into the record of this proceeding. The attachment responds to the January 8, 1999 letter addressed to The Honorable Bob Rowe, Chair, Communications Committee, NARUC, on behalf of various IXC's.

Sincerely,

A handwritten signature in cursive script, appearing to read "James K. Smith", written in dark ink.

Attachment

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**IMPLICATIONS OF FCC'S
SEPARATE AFFILIATE PROPOSAL
FOR LOCAL EXCHANGE TELEPHONE SERVICE
CC DOCKET NO. 98-147**

On January 8, 1999, AT&T, MCI/WorldCom, Qwest Communications and the Competitive Telecommunications Association (the IXC's) requested the National Association of Regulatory Utility Commissioners (NARUC) to convene a "federal/state forum" to "discuss" the Commission's contemplated action in this docket. The implication is that such a forum should take place before this Commission grants Section 706 relief. However, the IXC's concerns are either completely addressed by the record in this docket or represent complete misrepresentations of the Commission's position in this docket. This last-ditch plea to NARUC should in no way delay prompt action by the Commission in this proceeding.

I. The IXC's don't believe the Commission "fully appreciates" the consequences of its separate affiliate proposal on state regulation of local telephone companies.

- Further delay for "new" discussions is unnecessary. The IXC's themselves acknowledge that the Commission sought comments on the precise issues they raise. (See NPRM ¶ 117) The IXC's should not be able to end run and delay this Commission's proceedings by raising the same issues with NARUC.
- Moreover, the Commission doesn't purport to dictate how states should regulate intrastate services provided by the separate affiliate. (See NPRM ¶ 116). Subject to compliance with the 1996 Act, states can exercise their existing authority as they deem appropriate with respect to the intrastate services offered by the separate affiliate.
- The IXC's' eleventh hour lobbying effort to de-rail 706 relief is merely another attempt in their not-so-thinly veiled plan to use regulation to protect them from competition. For example, just this week MCI's Vice President of Marketing conceded, "We don't have a DSL product yet, but we do have plans. We'll be making some announcements on DSL later this year." (See Chicago Tribune, January 18, 1999, Section 4, page 2)

II. The IXC's criticize the Commission's separate affiliate proposal because, although focused on advanced services, it is not limited to advanced services.

- There is no statutory justification to hobble the separate affiliate by restricting its services or investment. As the Commission properly observed, whether the separate affiliate is an incumbent LEC is not based on the nature of the service it provides, but whether it meets the definition of an "incumbent" in Section 251(h)." (NPRM ¶ 89)

- Nor is there any policy reason to restrict the separate affiliate. The IXC's hypothetical fears have not materialized during the five years of actual experience with Ameritech's separate data affiliate.
- The fact is that data competitors are already serving customers with combinations and packages of services, cable TV with high speed internet access (cable modems) for example. The separate affiliate should be allowed to compete by also packaging services customers need.
- Nor is there any policy justification to treat new broadband investment made by new data competitors different from that made by the separate affiliate. For example, on November 2, 1998, before the Washington Metropolitan Cable Club, AT&T's Chairman/CEO stated in no uncertain terms that he opposed open access to AT&T/TCI's broadband infrastructure:

Now some narrowband Internet service providers want the government to give them a free ride on those broadband pipes....That's just not fair. It's not right. Worse, it would inhibit industry growth and competition. No company will invest billions of dollars to become a facilities-based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.

III. The IXCs fear that the incumbent LEC will migrate its customer base to the separate affiliate, where they will be "sheltered" from Section 251(c).

- Having now run out of their typical claims of incentives to discriminate, the IXCs turn to a different scare tactic: Further regulatory relief will gut the existing network. That claim is pure bunk.
- As a matter of law, the Commission has the authority pursuant to Section 251(h) to determine – based on the facts – whether the separate affiliate is either a "successor or assign" or a "comparable carrier" and thereby subject to 251(c).
- As a matter of fact, the IXC's "fears" are totally misplaced.
 - ILECs will still have incentive to continue investments in existing voice, circuit-switched network.

Many customers will stay on that network for many services.

For example, Ameritech just announced \$2 billion capital investment in that network for 1999. This includes 300,000 miles of fiber optic cable in addition to the 200,000 miles installed last year.

- Even if IXC's are correct that ILEC's will not have an incentive to continue those investments, the problem isn't removal of disincentive to invest in advanced telecommunications services, the problem is the existing regulatory disincentives to invest in the local exchange.

Notably, none of the IXC signatories to the letter have done anything substantial to invest in either existing or new technologies to serve mass-market customers.

And, when they announce their plans to do so, they steadfastly refused to be saddled with the same regulatory restrictions that apply to ILEC's.

IV. The IXC's also fear that the "practical consequences" of the Commission's separate affiliate proposal will be to deny competitors access to network elements.

- The IXC's claim: "That the Commission's plan would exempt ILEC facilities from Section 251(c) . . ."
- Again, the IXC's are wrong. The FCC's proposal is just the opposite. In describing its separate affiliate proposal, the Commission stated: ". . . we emphasize that we are not proposing to forbear from Section 251(c) requirements. Rather, we are setting forth proposals on the circumstances under which an affiliate is not deemed an incumbent LEC in the first place." (NPRM at ¶ 93)
- As the Ameritech/NorthPoint joint proposal demonstrates, all competitive LEC's – including the separate affiliate – will have access to the same unbundled loops, collocation and interconnection opportunities.

V. State Commissions will continue to have a role over local telecommunications services.

- The premise of the IXC's' feigned concern is that state commissions are regulatory weaklings who lack any mechanism to continue universal service goals. That's insulting to state commissions and plain false.
 - Wholesale elements will continue to be made available pursuant to existing law, consistent with the 1996 Act, in Section 252 interconnection agreements approved by state commissions.

- Subject to the 1996 Act, states will continue to have existing authority over incumbent ILECs pursuant to state authority.
- To the extent that the states are concerned about incentives to invest in the local network for mass market customers they should:
 - Set unbundled network element pricing to incent all providers (new entrants and ILECs) to invest in the local network.
 - Remove subsidies from retail rates to incent such investment.
 - Deal with issue through universal service obligations that apply symmetrically to all providers. (Based on IXC's concerns, they should be the first to step up to these obligations.).

This Commission should not delay its action in this docket.

- There is no need to wait or delay for a new state/federal forum on Section 706. Those issues have been fully debated for too long.
- Now is the time for the FCC to act as mandated in Section 706. The record is complete, the Commission can act now to grant Section 706 relief. However, as part of an effective communication process with the states, the Commission may want to convene a national forum to discuss implementation issues associated with their Order.
- Further delay is bad for customers and competition.
 - Delays availability of advanced data services.
 - Plays into IXCs' delay strategy—Commission will be picking winners and losers.